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The Modern Law of Charities as Derived from the Statute of Charitable Uses

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THE MODERN LAW OF CHARITIES AS DERIVED FROM THE STATUTE OF CHARITABLE USES.

The best definition of a legal charity would seem to be that given by Gray, J., in *Jackson* v. *Phillips*:[1] "A charity, in the legal sense, may be more fully defined as a gift, to be applied consistently with existing laws, for the benefit of an indefinite number of persons, either by bringing their minds or hearts under the influence of education or religion, by relieving their bodies from disease, suffering, or constraint, by assisting them to establish themselves in life, or by erecting or maintaining public buildings or works, or otherwise lessening the burdens of government. It is immaterial whether the purpose is called charitable in the gift itself, if it is so described as to show that it is charitable in its nature."

Horace Binney, in *Vidal* v. *Girard's Executors*,[2] defined

[1] 14 Allen, 556.

[2] 2 How. (U. S.) 127.

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a legal charity as "whatever is given for the love of God or the love of your neighbor, in the catholic and universal sense; given from these motives and to these ends; free from the stain or taint of every consideration that is personal, private, and selfish," and this has been approved by the Supreme Court of Pennsylvania in *Price* v. *Maxwell*.[3]

Briefly stated, although charitable trusts did not exist as such before the foundation of Courts of Chancery, something very much like them had existed for a considerable period. There were a number of existing religious houses and guilds, and there was the parson of every parish, all persons having perpetual successors, with certain property which devolved upon them, and certain charitable duties which they had to perform.[4] These were all recognized as corporations at common law, although they showed no authority of constitution. In early times then, charity consisted in gifts to such corporations, and in the case of lands the Crown consequently lost all the feudal services with respect to the property so alienated. To prevent this a series of successive Mortmain Acts were passed.[5] These put a stop to charitable gifts of land to corporations, but a new method for effecting them was soon invented. The system had gradually been adopted of making gifts of land to individuals to the use of the religious houses, and under these gifts the religious houses took the profits. A blow was given this system in the reign of Henry VIII by the Statute of Uses, which conferred the legal estate on the *cestui qui use—i.e.*, the one who had the use of the land. The effect of this statute was destroyed by a decision that the legal title was only conferred on the first person named to have the use, and if he was further ordered to pass on the beneficial interest to some one else, the legal estate did not go with it. Chancery, however, compelled the legal owner to allow the beneficial interest to pass as ordered, and the old system was

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[3] 28 Pa. St. 35. Note: But a condition that the donor's name shall be attached to the gift does not necessarily invalidate it as a charity.

[4] Tyssen, Charitable Bequests, Chap. I, passim.

[5] 7 Edw. I, c. 2; 13 Edw. I, c. 32; 18 Edw. III, Stat. 3, c. 3; 15 Rich. II, c. 5.

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thus brought into use again under the name of trusts.[6] Under this system gifts could be made to trustees on trust to apply the income to any purpose the donor saw fit, and one by one the questions of the validity of such trusts came before the Court of Chancery for decision. If such trusts were for the public benefit, the court held them good; in determining what were in reality charitable trusts the early judges confined themselves closely to the list of such purposes enumerated in the Statute of Charitable Uses, 43 Eliz. c. 4, but later judges have considered the spirit no less important than the letter of that act.

The Statute 43 Eliz. c. 4,[7] passed in 1601, was long regarded as limiting the classes of legal charities. It recited that land, money, and other property had been given for various charitable purposes, which it enumerated, and authorized the appointment of commissioners to inquire into such gifts and make orders for their proper application. The list of charitable purposes contained in it has always been treated as an expression by the legislature that all such purposes are lawful charitable purposes, and a guide to the court in deciding on the legality of other purposes.[8]

The list enumerated in the statute is as follows:

(1) The relief of aged, impotent, and poor people.

(2) The maintenance of sick and maimed soldiers and mariners.

(3) The maintenance of schools of learning, free schools, and scholars in universities.

(4) The repair of bridges, ports, havens, causeways, churches, sea-banks, and highways.

(5) The education and preferment of orphans.

(6) The relief, stock, or maintenance for houses of correction.

(7) Marriages of poor maids.

(8) The supportation, aid, and help of young tradesmen, handicraftsmen, and persons decayed.

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[6] Tyssen, Charitable Bequests, Chap. I.

[7] The Statute of Charitable Uses, Anno 43 Elizabethæ, c. 4 (1601), entitled "An Act to redress the misemployment of lands," etc.

[8] Tyssen, Charitable Bequests, Chap. IV.

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(9) The relief or redemption of prisoners or captives.

(10) The aid or ease of any poor inhabitants concerning payment of fifteens, setting out of soldiers, and other taxes.[9]

The history of the law of charities prior to the Statute 43 Eliz. c. 4 is very obscure. The principal cases reported at such an early date were decided in the common law courts, and usually turned upon the question whether the use were void or not under the statute against superstitious uses.[10] It was never generally doubted that courts of equity, by virtue of their broad jurisdiction over trusts, and without reference to the statute, had jurisdiction over charitable trusts which presented no unusual features,[11] but two opinions were for a long time held whether the power of such courts to effectuate charitable donations in favor of uncertain beneficiaries, or those in whom no legal estate vested, originated in the statute, or existed prior thereto in the common law.[12]

Lord Longborough stated in *Attorney-Gen.* v. *Bowyer*[13] that as the result of his study he concluded that until about the date of the statute of Elizabeth bills were never filed in Chancery to establish charities, and this opinion was frequently concurred in by the English courts.[14] One of the few cases to be found dating from before the statute, Porter's case,[15] established that charitable uses not superstitious were good at law, and inasmuch as the Courts of Chancery immediately afterwards held the feoffees to such uses accountable in equity for their due execution, it was not a rash conjecture for later judges to make, says Story,[16] in commenting upon this view, that the inconvenience felt in resorting to this new and anomalous proceeding, from the

[9] Tyssen, Charitable Bequests, Chap. IV.

[10] 2 Story, Eq. Jur. § 1143; also Baldwin, J., in the case of Sarah Zane's will, Cir. Ct. Pa., April Term, 1833.

[11] American and Eng. Enc., 2 Ed., p. 897.

[12] Idem, p. 898.

[13] 3 Ves. Jr. 714, 726.

[14] See Sir Joseph Jekyll, M. R., in *Eyre* v. *Countess of Shaftesbury*, 2 P. Williams, 119; Lord Somers in *Cary* v. *Bertie*, 2 Vern. R. 333, 342; *Attorney-Gen.* v. *Brereton*, 2 Ves. 425, 427.

[15] 1 Co. 22b. in 34 and 35 Elizabeth.

[16] 2 Story Eq. Jur. § 1145.

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indefiniteness of some of the uses, gave rise within a very short time to the statute.[17]

Chief Justice Marshall, in *Baptist Association* v. *Hart's Executors*,[18] took the position that the Chancery jurisdiction in effectuating charitable donations originated strictly in the statute. After an exhaustive review of the early cases, Marshall concludes that they are all "to be considered as constructions of the statute, not entirely to be justified, rather than as proving the existence of some other principle concealed in a dark and remote antiquity, and giving a rule in cases of charity which forms an exception to the general principles of our law.[19]

This view was never universally accepted, and the question was reopened in *Vidal* v. *Girard's Executors*.[20] There it was finally settled. Judge Story, after considering a long line of authorities[21] and examining the ancient records of the Court of Chancery, says:

"But what is still more important is the declaration of Lord Redesdale, a great judge in equity, in *Attorney-Gen.* v. *Dublin* (1 Bligh N. S. 312), where he says:

"'We are referred to the statute of Elizabeth with respect to charitable uses as creating a new law upon the subject of charitable uses. That statute only created a new jurisdiction; it created no new law. It created a new and ancillary jurisdiction, a jurisdiction created by commission, etc.; but the proceedings of that commission were made subject to appeal to the Lord Chancellor, and he might reserve or affirm what they had done, or make such order as he might think fit for reserving the controlling juris-

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[17] There was, in fact, an act passed respecting charitable uses in 39 Elizabeth, c. 9, but it was repealed by Act of 43 Elizabeth, c. 4.

[18] 4 Wheat. 1, citing Collison's case, Hob. 136; *Attorney-Gen.* v. *Platt*, Finch, 221; *Attorney-Gen.* v. *Bowyer*, 3 Ves. Jr. 726; *Morice* v. *Durham*, 9 Ves. Jr. 399, 10 Ves. Jr. 540; *West* v. *Knight*, Chap. I, Cases 134.

[19] Idem, *49.

[20] 2 How. 127.

[21] Among others, *Eyre* v. *Shaftesbury*, 2 P. Wms. 119; *Attorney-Gen.* v. *Downing*, Ambl. 550; *Attorney-Gen.* v. *Skinners' Co.*, 2 Russ. 407; *Attorney-Gen.* v. *Grammar School*, 1 Myl. & K. 376.

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diction of the Court of Chancery as it existed before the passing of that statute.' . . . There is the recent case of the *Incorporated Soc.* v. *Richards,* 1 Dr. & War. 258, when Lord Chancellor Sugden, . . . upon a full survey of all the authorities, and where the point was directly before him, held the same doctrine as Lord Redesdale, and expressly decided that there is an inherent jurisdiction in equity in cases of charity, and that charity is one of those objects for which a court of equity has at all times interfered to make good that which at law was an illegal or informal gift, and that cases of charity were valid in courts of equity in England independent of and previous to the statute of Elizabeth. . . . But very strong additional light has been thrown on this subject by the recent publication of the commissioners on the public records in England, which contain a very curious and interesting collection of the Chancery records in the reign of Queen Elizabeth and the earlier reigns. Among these are found many cases in which the Court of Chancery entertained jurisdiction over charities long before the statute of 43 Elizabeth . . . They establish in the most satisfactory and conclusive manner that cases of charities where there were trustees appointed for general and indefinite charities, as well as for specific charities, were familiarly known to, acted upon, and enforced in the Court of Chancery. In some of these cases, the charities were not only of an uncertain and indefinite nature, but as far as we can gather from the imperfect statement in the printed records they were also cases where there were either no trustees appointed or the trustees were not competent to take."

This expression of Justice Story is now regarded as settled law.[22] It follows, therefore, that the statute did not create a new law with respect to charities, but only furnished a new and ancillary remedial jurisdiction for enforcing them.

The statute has been variously regarded in the United

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[22] *Perin* v. *Carey,* 24 How. 465; *Ould* v. *Washington Hospital,* 95 U. S. 303; *Kain* v. *Gibboney,* 101 U. S. 362.

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States.[23] It has been recognized as part of the common law in Maine, Massachusetts, Illinois, Kentucky, Missouri, and North Carolina,[24] and has been virtually re-enacted in Connecticut and Rhode Island. The statute, aside from the effect of its enumeration of charities, has been rejected in New York, New Jersey, Delaware, Maryland, the District of Columbia, Indiana, Michigan, South Carolina, Tennessee, Virginia, West Virginia, Mississippi, and California. The question of its status has been raised but left undetermined in Alabama, New Hampshire, and Texas. In Pennsylvania, Ohio, and Georgia the principles developed under the statute by the English courts of equity have been approved and adopted, although those states do not specifically recognize it as part of their common law. In the remaining states the question has not been squarely brought before the courts.

The status of the statute in Pennsylvania is perhaps best expressed in the words of Bell, J., in *Wright* v. *Linn*,[25] where the learned judge says: "Though the Statute 43 Elizabeth, c. 4, relating to charitable uses, has not in terms been recognized as extending to Pennsylvania, we have adopted not only the principles that properly emanate from it, but, with perhaps the single exception of *cy pres*, those which, by an exceedingly liberal construction, the English courts have engrafted upon it. The peculiar qualities commonly ascribed to its operation are freely administered here wherever our means are found adequate to the purpose; and in this respect our competency has been much enlarged by the laws extending the equitable powers of our tribunals."

We now come to a consideration of the purpose to which the statute is commonly put to-day. It is regarded as a universal standard or test in deciding what objects are to be considered charitable, and it is the accepted rule that those objects only are charitable which are named in the act or are considered within its spirit.

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[23] American and English Enc., 2d Ed., Vol. V, p. 899, 900; *Ould* v. *Washington Hospital*, 95 U. S. 303.

[24] (For cases in all these and following states see Am. and Eng. Enc., 2d Ed., Vol. V, p. 900.)

[25] 9 Pa. St. 433.

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This was decided in England in *Morice* v. *Bishop of Durham*,[26] in which case Grant, M. R., said: "That word" (charity) "in its widest sense denotes all the good affections men ought to bear towards each other; in its most restricted and common sense, relief of the poor. In neither of these senses is it employed in this court. Here its signification is chiefly derived from the statute of Elizabeth. Those purposes are charitable which the statute enumerates or which by analogies are deemed within its spirit and intendment; and to some such purpose every bequest to charity generally shall be applied."

This has been accordingly the view taken by successive English courts in regard to the question "What constitutes a charity?" In *Commissioners* v. *Pemsel*[27] Lord Halsbury said that very shortly after its enactment the Court of Chancery was used to interpret the enumeration of charitable objects in the preamble of the statute as not limited to the exact charities therein referred to. Where a purpose was deemed within the spirit of the act, it was held "charitable," and the court alone was the judge of what objects came within the spirit.

In the United States generally the same liberal view of the enumeration of charities in the statute has prevailed as in England. In Pennsylvania this broad view seems generally to have been taken for granted. Thus, in *Wright* v. *Linn*,[28] the court, after showing how the principles of the statute had been recognized in Pennsylvania, say: "In *Witman* v. *Lex*[29] it is observed, that as the jurisdiction of our courts is not founded on the statute, it is not restrained to the cases specially enumerated in the preamble. The same remark is almost equally true in England. There the equity of the act has been extended to embrace a large variety of subjects, by analogy to those enumerated, until the limits of the circle have swelled far beyond the bounds prescribed by

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[26] 9 Ves. Jr. 399; *s. c.* 10 Ves. Jr. 522.

[27] 1891, L. R. App. C. 591, at p. 543. See also *Cumack* v. *Edwards*, 2 Ch. (1896) 685.

[28] 9 Pa. 433.

[29] 17 S. & R. 88.

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the language of the enactment. Indeed, it is now asserted to be merely directory, since, as is said, the jurisdiction existed long before. The fashion has everywhere been to enlarge, but never to circumscribe, the operation of the statute. It therefore furnishes in both countries an unerring test of the character to be ascribed to those objects and subjects of which it specially speaks."

Sharswood, J., said in *Mann* v. *Mullin*:[80] "The foundation upon which the doctrine of charitable uses rests in this state is firmly settled. While the statute of Elizabeth is not in force, the principles which the English Chancery has adopted on the subject obtain here, not by virtue of the statute, but as part of our common law. The fact is that those principles were recognized and applied in England before the statute, which only introduced a new remedy. Hence, trusts for charities with us have always beeen upheld and enforced, no matter how uncertain were the objects and though the effect evidently was to create a perpetuity."

The question of a strict or loose construction has come before few of our courts for determination. It arose in an early case in Massachusetts, *Sanderson* v. *White*,[81] where Shaw, C. J., stated that ever since the passage of the act of 43 Elizabeth, c. 4, it had been an established rule that all gifts are to be deemed charitable which are enumerated in that statute as such, and none other.

But in 1865 the Massachusetts court took an entirely different view of the statute in the case of *Drury* v. *Natick*,[82] in which they held that it was not meant to contain an exhaustive list of all objects that are charitable, but rather a number of familiar examples of those kinds of uses which were felt to be of sufficient advantage to the general public to deserve especial favor from the courts.[83] The aim of the statute is "to show by familiar examples what classes or kinds of uses were considered charitable or so beneficial to

[80] 84 Pa. 297.
[81] 18 Pick (Mass.), 328.
[82] 10 Allen (Mass.), 169.
[83] Notes on the Law of Charity Trusts in Massachusetts, by J. Noble, p. 27, n. 1.

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the public as to be entitled to the same protection as strictly charitable uses, rather than to enumerate or specify all the purposes which would fall within the scope and intent of the statutes, much less every possible mode of carrying them out." In determining what uses are charitable within the statute, "Courts are to be guided not by its letter, but by its manifest spirit and reason, and are to consider not what uses are within its words, but what are embraced in its meaning and purpose." [84]

Continuing, the same court said: "The apparently inconsistent statement of Chief Justice Shaw in *Sanderson* v. *White*, that all gifts are to be deemed charitable which are enumerated in that statute as such, and none other, is shown by referring to the case of *Morice* v. *Bishop of Durham*, 10 *Vesey*, 521, which he cites in its support, to have omitted, either by accident or as immaterial to the case then under consideration, the words added by Sir William Grant, 'Or which by analogies are deemed within its spirit and intendment.'" [85]

Similarly, Devens, J., in *White* v. *Ditson* [86] has said: "The word *charitable* has a distinct legal meaning derived from the statute of 43 Elizabeth, c. 4, from the construction given to it in the definition of its objects of charity and from the application of the statute to other uses which are not included in those there enumerated, but which come within its spirit by analogy."

The same principle holds good in Illinois. "It is true," the Court there said in *Taylor* v. *Keep*,[87] that many purposes not enumerated in the statute have been held to be charitable on the ground that though not within the letter, they are within the spirit, intention, and principle. On the other hand, many objects of a general nature, though laudable and beneficent in their character and of general utility, are held not to be included within the legal definition of charity."

In New Jersey the law was clearly stated in *Norris* v.

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[84] *Drury* v. *Natick*, 10 Allen (Mass.), 169.
[85] Ibid., p. 182.
[86] 140 Mass. 351.
[87] 2 Ill. App. 368.

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Thomson's Executors.[88] The chancellor, in summing up the situation, stated: "On the equity of this statute" (43 Elizabeth) "and the rights established by it, that court" (the English Chancery) "took jurisdiction of all charities or subjects included within it. Many of them, as the maintaining of bridges, causeways, and houses of correction, were neither charitable nor religious objects in the usual sense of these terms. Yet in proceedings by bill and in information instituted in that court, and not in any way under the provisions of the act, the Court of Chancery has always defined charitable and religious objects according to the enumeration in the preamble of that act; not limiting the objects by the terms of the act literally, but limiting them to matters of like nature.

"That statute is not in force in this state, and therefore cannot limit the authority of this court to enforce charitable gifts not included within it. It was not used for that purpose by the English equity courts, but it was used by them to enlarge their power. The rule of law and in equity before that statute was, that a gift or devise for a purpose or object so vague and indefinite that the Court of Chancery could not enforce it, was void. After the statute of charitable uses, the court held that all gifts for any object enumerated in it were for purposes sufficiently definite, and therefore would be enforced in Chancery. In cases where the object of the gift would not have been held sufficiently definite without the statute and have since been held sufficient by force of the statute, the authority of the decision might perhaps be questioned on the ground that the statute is not in force here. But where, on the other hand, the English courts have held the object too indefinite, and the use therefore void notwithstanding the statute, their decisions are entitled to the same respect here as in all other cases in which we take them for our guide. The object of the statute of Elizabeth was not to make void or restrain, but to give effect to gifts for charitable and pious uses."

The most important act of legislation in Pennsylvania

[88] 19 N. J. Eq. 307.

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dealing with charities is that of April 26, 1855, P. L. 328. Its provisions do not in any way define the term "charity," and consequently we find little within it to aid us in our present inquiry. Paragraph 15 of the act states that "all dispositions of property hereafter made to religious, charitable, literary, or scientific uses, and all incorporations or associations formed for such objects, shall be taken to have been made and formed under and in subordination to all the duties and requisitions of this act, as rules of property and laws for their government." The words religious and charitable uses in the foregoing provision have been broadly held to mean legal acts done for the promotion of piety among men or for the purpose of relieving their sufferings, enlightening their ignorance, and bettering their condition.[89]

Using the enumerated objects of the statute of Elizabeth as a basis, it will now be clear that both the English and American courts allow themselves the utmost freedom within precedents in determining what are and are not charities.

The statute undeniably crystallized what had before been a subject of the greatest vagueness; it is still the lodestone to which modern courts submit the cases coming under their consideration, but its decision is no longer final, and merely indicates the general road our later courts must travel.

Rupert Sargent Holland.

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[89] *Miller* v. *Porter*, 53 Pa. 292.

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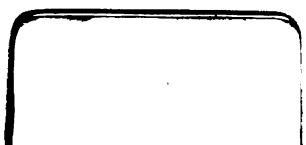

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